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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/590,668

08/25/2006

Andrew Childs

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3787

25269

7590

03/08/2010

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EXAMINER

WANG, CHUN CHENG

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

03/08/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/590,668	<b>Applicant(s)</b> CHILDS ET AL.	
	<b>Examiner</b> Chun-Cheng Wang	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02/04/2010</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This office action is in response to the Amendment filed on 10/26/2009. Claim 1 has been cancelled. Claims 2-13 are now pending.
2. The objections and rejections not addressed below are deemed withdrawn.
3. The text of those sections of Title 35, U.S. Code not included in this section can be found in a prior Office Action.

### ***Response to Amendment***

4. The declaration under 37 CFR 1.132 filed 10/26/2009 is insufficient to overcome the rejection of claims 2-13 based upon being anticipated by Fukuda (US 4254105) under 35 U.S.C. 102(b) (Claims 2-9 and 11-13) and being unpatentable over Fukuda (US 4254105) in view of Barnett et al. (US 4999198) under 35 U.S.C. 103(a) (Claim 10) as set forth in the last Office action because: The declaration failed to set forth facts about Fukuda Example 10 which is cited in the previous Office action. The declaration also failed to set forth facts about unobviousness about and being unpatentable over Fukuda (US 4254105) in view of Barnett et al. (US 4999198) under 35 U.S.C. 103(a) (Claim 10). Claims 2-9 and 11-13 are rejected based on Fukuda, which meets each and every claimed limitation, especially by Fukuda Example 10: Nutrient Cream. The declaration under 37 CFR 1.132 filed 10/26/2009 is based on Fukuda Example 11: Suntan Lotion, which is not cited for rejection.

### ***Claim Rejections - 35 USC § 102***

5. Claims 2-9 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Fukuda (US 4254105).

The rejections stand as per the reasons set forth in paragraph 3 of the previous Office Action, incorporated herein by reference.

It is noted claim 12 is rejected by the combined rejection of claim 1 and 12 from the previous Office action.

***Claim Rejections - 35 USC § 103***

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda (US 4254105) in view of Barnett et al. (US 4999198).

The rejections stand as per the reasons set forth in paragraph 6 of the previous Office action, incorporated herein by reference.

***Response to Arguments***

7. Applicant's arguments filed 10/26/2009 have been fully considered but they are not persuasive.

8. Applicants argument about the rejection of claim 12 would not be obvious evidenced by the declaration under 37 CFR 1.132 filed 10/26/2009 based on Fukuda Example 11 experiment.

Response: Claims 2-9 and 11-13 are rejected as being anticipated by Fukuda (US 4254105) under 35 U.S.C. 102(b) and the declaration does not address rejection of claim 10 being unpatentable over Fukuda (US 4254105) in view of Barnett et al. (US 4999198) under 35 U.S.C. 103(a) (Claim 10) as set forth in the last Office action. The declaration also failed to set forth facts about Fukuda Example 10 which is cited in the previous Office action.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chun-Cheng Wang whose telephone number is (571)270-5459. The examiner can normally be reached on Monday to Friday w/alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1796

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ling-Siu Choi/  
Primary Examiner, Art Unit 1796

/Chun-Cheng Wang/  
Examiner, Art Unit 1796

/CCW/